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5 Attorneys for Defendant  
REPOSSESSION SPECIALIST, INC. dba ABA RECOVERY SERVICE, INC.  
6 (erroneously sued and served as ABA RECOVERY SERVICE, INC.)  
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11 UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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14 JOSEPHINE THORNTON, } CASE NO.: 15CV1971 CAB KSC  
15 v. } ANSWER ON BEHALF OF  
16 ABA RECOVERY SERVIC, INC., } DEFENDANT REPOSSESSION  
17 PAR, INC. dba PAR NORTH } SPECIALIST, INC. dba ABA  
18 AMERICAN, and DOES 1 through 10, } RECOVERY SERVICE, INC.  
inclusive } (ERRONEOUSLY SUED AND  
19 Defendants. } SERVED AS ABA RECOVERY  
20 SERVICE, INC.)  
21  
22 District Judge: Hon. Cathy Ann  
Bencivengo / Courtroom 4C  
Magistrate Judge: Hon. Karen S. Crawford  
Action Filed: September 3, 2015  
Trial Date: Not Yet Assigned

23 Comes now Defendant REPOSSESSION SPECIALIST, INC. dba ABA  
24 RECOVERY SERVICE, INC. (erroneously sued and served as ABA RECOVERY  
25 SERVICE, INC.), by and through counsel, and in Answer to Plaintiff's Complaint  
26 on file herein, state as follows:

27 1. In answer to paragraph 1, Defendant admits that it was hired by Par  
28 North to repossess Plaintiff's vehicle. Defendant lacks sufficient knowledge or  
information to form a belief as to the truth of rest of the allegations in paragraph 1  
and on that basis denies the allegations.

2. In answer to paragraph 2, Defendant denies each and every allegation  
contained in paragraph 2.

1       3. In answer to paragraph 3, Defendant denies each and every allegation  
2 contained in paragraph 3.

3       4. In answer to paragraph 4, on information and belief, Defendant admits  
4 the jurisdiction allegations in paragraph 4.

5       5. In answer to paragraph 5, on information and belief, Defendant admits  
6 the venue allegations in paragraph 5.

7       6. In answer to paragraph 6, Defendant lacks sufficient knowledge or  
8 information to form a belief as to the allegations in paragraph 6 and on that basis  
9 denies the allegations

10      7. In answer to paragraph 7, Defendant admits that ABA Recovery  
11 Services, Inc. is a California corporation with offices in San Diego, California.

12      8. In answer to paragraph 8, Defendant lacks sufficient knowledge or  
13 information to form a belief as to the trust of the allegations contained in paragraph  
14 8 and denies such allegations.

15      9. In answer to paragraph 9, Defendant lacks sufficient knowledge or  
16 information to form a belief as to the trust of the allegations contained in paragraph  
17 9 and denies such allegations.

18      10. In answer to paragraph 10, Defendant lacks sufficient knowledge or  
19 information to form a belief as to the trust of the allegations contained in paragraph  
20 10 and denies such allegations.

21      11. In answer to paragraph 11, Defendant realleges all responses to  
22 paragraphs 1-10 as though fully set herein.

23      12. In answer to paragraph 12, Defendant denies each and every allegation  
24 contained in paragraph 12.

25      13. In answer to paragraph 13, Defendant denies each and every allegation  
26 contained in paragraph 13.

27      14. In answer to paragraph 14, Defendant denies each and every allegation  
28 contained in paragraph 14.

1       15. In answer to paragraph 15, Defendant denies each and every allegation  
2 contained in paragraph 15.

3       16. In answer to paragraph 16, Defendant denies each and every allegation  
4 contained in paragraph 16.

5       17. In answer to paragraph 17, Defendant denies each and every allegation  
6 contained in paragraph 17.

7       18. In answer to paragraph 18, Defendant realleges all responses to  
8 paragraphs 1-17 as though fully set herein.

9       19. In answer to paragraph 19, Defendant admits that the cited statutes  
10 exist, however, Defendant denies any violations of such statutes.

11       20. In answer to paragraph 20, Defendant denies each and every allegation  
12 contained in paragraph 20.

13       21. In answer to paragraph 21, Defendant denies each and every allegation  
14 contained in paragraph 21.

15       22. In answer to paragraph 22, Defendant denies each and every allegation  
16 contained in paragraph 22.

17       23. In answer to paragraph 23, Defendant denies each and every allegation  
18 contained in paragraph 23.

19       24. In answer to paragraph 24, Defendant denies each and every allegation  
20 contained in paragraph 24.

21       25. In answer to paragraph 25, Defendant denies each and every allegation  
22 contained in paragraph 25.

23       26. In answer to paragraph 26, Defendant denies each and every allegation  
24 contained in paragraph 26.

25       27. In answer to paragraph 27, Defendant denies each and every allegation  
26 contained in paragraph 27.

27       28. In answer to paragraph 28, Defendant denies each and every allegation  
28 contained in paragraph 28.

29. In answer to paragraph 29, Defendant realleges all responses to paragraphs 1-28 as though fully set herein.

30. In answer to paragraph 30, Defendant denies each and every allegation contained in paragraph 30.

31. In answer to paragraph 31, Defendant denies each and every allegation contained in paragraph 31.

32. In answer to paragraph 32, Defendant denies each and every allegation contained in paragraph 32.

33. In answer to paragraph 33, Defendant denies each and every allegation contained in paragraph 33.

## **FIRST AFFIRMATIVE DEFENSE**

34. Defendant is informed and believes and on that basis alleges that Plaintiff's Complaint fails to state a claim against Defendant for which relief may be granted.

## **SECOND AFFIRMATIVE DEFENSE**

35. Defendant is informed and believes and upon such information and belief alleges that at all times mentioned herein, if any Defendant was negligent, the conduct of all other parties, both known and unknown, should be compared to determine the degree of fault, if any, between the parties.

### **THIRD AFFIRMATIVE DEFENSE**

36. Defendant is informed and believes and upon such information and belief alleges that at all times mentioned herein, Plaintiff was negligent, careless and reckless and unlawfully conducted herself so as to substantially contribute to Plaintiff's alleged injuries and damages compared to the conduct of all other parties, all of which said negligence either bars in whole or in part damages sought herein.

## **FOURTH AFFIRMATIVE DEFENSE**

37. Defendant is informed and believes and upon such information and belief alleges that at the time and place of the incident alleged in Plaintiff's

1 Complaint, the Plaintiff knew of the danger and risk incident to the undertaking, but  
 2 despite such knowledge, Plaintiff freely and voluntarily assumed and exposed  
 3 herself to all risk of harm and the consequential injuries and damages, if any,  
 4 therefrom.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 38. Defendant is informed and believes and thereon alleges that in the  
 7 event Plaintiff should establish any liability on the part of this answering Defendant,  
 8 which liability is expressly denied, this answering Defendant may not be obligated  
 9 to pay sums representing a proportion or percentage of fault not his/her own, but  
 10 that of Plaintiff, other parties to this action and third persons not parties to this  
 11 action. Defendant is entitled to an adjudication and determination of the respective  
 12 proportions or percentages of fault, if any, on this answering Defendant's part and  
 13 on the part of the Plaintiff and other parties to this action and third persons not  
 14 parties to this action pursuant to the Doctrines of Comparative Negligence and the  
 15 Fair Responsibility Act of 1986, codified in Civil Code §1431-1431.5.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 39. Defendant is informed and believes and thereon alleges that at all times  
 18 mentioned herein, if any defendant was negligent, co-defendants, both known and  
 19 unknown, were negligent, careless and reckless and unlawfully conducted  
 20 themselves so as to substantially contribute to Plaintiff's injuries, damages and  
 21 losses, and said negligence, if any, either bars in whole or in part damages sought  
 22 herein against this answering defendant.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 40. Defendant is informed and believes and thereupon alleges that its  
 25 action or inaction was not the sole, legal or proximate cause of the incidents upon  
 26 which liability is based or damages awarded, if any, and that damages awarded, if  
 27 any, must be apportioned according to the respective fault of all parties, persons or  
 28 entities, or their agents, servants and employees, whether or not parties to this

1 litigation, who contributed to or caused the incidents or damages alleged in the  
2 Complaint.

## **EIGHTH AFFIRMATIVE DEFENSE**

4       41. This answering Defendant is informed and believes and thereon alleges  
5 that the negligence, if any, of this answering Defendant was not a substantial factor  
6 in bringing about the Plaintiff's alleged injuries and damages, and therefore was not  
7 a contributing cause thereof, but was superseded by the negligence of others, whose  
8 negligence was an independent, intervening, superseding and a proximate cause of  
9 any injury or damage suffered by the Plaintiff.

## NINTH AFFIRMATIVE DEFENSE

11       42. Defendant is informed and believes and upon such information and  
12 belief alleges that Plaintiff has failed to mitigate the damages referred to in the  
13 Complaint, barring relief, in whole or in part, as to this answering Defendant.

## **TENTH AFFIRMATIVE DEFENSE**

15       43. This answering Defendant is informed and believes and thereon alleges  
16 that Plaintiff's claims are barred by Plaintiff's own willful misconduct.

## **ELEVENTH AFFIRMATIVE DEFENSE**

18       44. This answering Defendant is informed and believes and thereon alleges  
19 that Plaintiff's claims are barred by the doctrine of estoppel.

## **TWELFTH AFFIRMATIVE DEFENSE**

21       45. This answering Defendant is informed and believes and thereon alleges  
22 that Plaintiff's claims are barred by the doctrine of waiver.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

24       46. This answering Defendant is informed and believes and thereon alleges  
25 that the Complaint and the averments thereof are uncertain, vague and ambiguous.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

27       47. This answering Defendant is informed and believes and thereon alleges  
28 that the Complaint and every cause of action contained therein, is barred by the

1 provisions of California Code of Civil Procedure Sections 337, 337.1, 337.15, 338,  
2 339, 339.5, 340, 342, 343, as well as Civil Code Section 2079.4, and any and all  
3 other applicable statutes of limitation.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 48. This answering Defendant is informed and believes and thereon alleges  
6 that Plaintiff has voluntarily engaged in wrongful and bad faith conduct and  
7 activities with respect to the matters and transactions referred to in the Complaint  
8 herein, barring any and all relief against this answering Defendant under the  
9 doctrine of unclean hands.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 49. This answering Defendant is informed and believes and thereon alleges  
12 that Plaintiff's claims that Defendant engaged in unfair debt collection practices in  
13 violation of the Fair Debt Collections Practices Act and California Civil Code  
14 §§1788, et seq., are barred by other provisions of Federal and California State law.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 50. This answering Defendant is informed and believes and thereon alleges  
17 that Plaintiff has failed to plead with particularity the circumstances constituting the  
18 alleged fraud and/or misrepresentation.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 51. This answering Defendant is informed and believes and thereon alleges  
21 that Plaintiff has engaged in conduct and activities, pursuant to which she has  
22 waived any and all claims and/or causes of action she may have against this  
23 answering Defendant.

24 **NINTEENTH AFFIRMATIVE DEFENSE**

25 52. This answering Defendant is informed and believes and thereon alleges  
26 that Plaintiff has engaged in conduct and activities by reason of which she is  
27 estopped to assert any claim or cause of action against this answering Defendant.

28 ///

1                   **TWENTIETH AFFIRMATIVE DEFENSE**

2       53. This answering Defendant is informed and believes and thereon alleges  
3 that Plaintiff has not suffered any injury or damage whatsoever, and further denies  
4 that Defendant is liable to Plaintiff for any injury or damage whatsoever.

5                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6       54. This answering Defendant is informed and believes and thereon alleges  
7 that this Defendant has met all appropriate standards for professional conduct  
8 according to all rules promulgated in the Business and Professions and Civil Code  
9 Sections.

10                  **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11       55. This answering Defendant is informed and believes and thereon alleges  
12 that the Plaintiff's claims are barred, because the alleged acts of Defendant, forming  
13 the basis of the Complaint, were lawful, explicitly approved and/or exempt from  
14 prosecution.

15                  **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16       56. This answering Defendant is informed and believes and thereon alleges  
17 that Plaintiff's claims are barred, in whole or in part, because Defendant, at all  
18 times, acted in good faith and did not directly or indirectly perform any act  
19 whatsoever that would constitute a violation of any right of Plaintiff's or any duty  
20 owed to Plaintiff.

21                  **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22       57. This answering Defendant is informed and believes and thereon alleges  
23 that the alleged representations are not actionable statements of fact under  
24 applicable law.

25                  **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26       58. This answering Defendant denies each and every claim of Plaintiff and  
27 denies that Defendant engaged in any wrongdoing or error of any kind. However,  
28 should any alleged error be identified, then Plaintiff's claims are barred because any

1 alleged error on Defendant's part was a bona fide error notwithstanding Defendant's  
2 use of reasonable procedures adopted to avoid any such error.

3                   **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4       59. This answering Defendant is informed and believes and thereon alleges  
5 that Plaintiff have failed to set forth facts sufficient to support an award for  
6 attorneys' fees.

7                   **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

8       60. This answering Defendant is informed and believes and thereon alleges  
9 that it is entitled to the reasonable value of its attorneys' fees, costs of suit and other  
10 litigation expenses incurred in the defense of this action.

11                  **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12       61. This answering Defendant is informed and believes and thereon alleges  
13 that the Complaint and the purported causes of action alleged therein fail to set forth  
14 facts sufficient to allow for recovery of punitive or exemplary damages from  
15 Defendant.

16                  **TWENTY-NINTH AFFIRMATIVE DEFENSE**

17       62. This answering Defendant is informed and believes and thereon alleges  
18 that the Complaint, to the extent it seeks punitive or exemplary damages, violates  
19 the rights of Defendant to procedural and substantive due process under the  
20 Fourteenth Amendment to the United States Constitution and under the Constitution  
21 of the State of California.

22                  **THIRTIETH AFFIRMATIVE DEFENSE**

23       63. This answering defendant alleges that plaintiff lacks the standing to  
24 bring suit against this answering defendant before this Court.

25                  **THIRTY-FIRST AFFIRMATIVE DEFENSE**

26       64. This answering defendant alleges that the negligent actions of others  
27 constitute superseding, intervening causes of Plaintiff's alleged injuries and/or  
28 damages.

1                   **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2         65. This answering defendant alleges that Plaintiff's Complaint and each  
3         purported cause of action therein are barred by the doctrines of express and implied  
4         consent by Plaintiff.

5                   **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6         66. This answering Defendant is informed and believes and thereon alleges  
7         that the Plaintiff's Complaint, and each cause of action therein, is stated in  
8         conclusory terms, and therefore said Defendant cannot fully anticipate all  
9         affirmative defenses which may be applicable to this action. Accordingly, this  
10       answering Defendant reserves the right to add additional affirmative defenses.

11               WHEREFORE, this answering Defendant prays judgment against Plaintiff as  
12       follows:

- 13               1. That Plaintiff take nothing by way of the Complaint;  
14               2. That Judgment be entered in favor of Defendant and against Plaintiff on  
15       all causes of action;  
16               3. For attorneys' fees and costs of suit incurred herein; and  
17               4. For such other and further relief as the Court may deem just and proper.

19       Dated: October 16, 2015

**FARMER CASE & FEDOR**  
20       By:

21               /s/ Anthony T. Case  
22               ANTHONY T. CASE, ESQ.  
23               MICHELE M. ANGELES, ESQ.  
24               Attorneys for Defendant  
25               REPOSSESSION SPECIALIST, INC.  
26  
27  
28

1 **Case Name:** Thornton v. ABA Recovery Service, Inc., et al.  
2 **Southern District Court of California:** 15CV1971 CAB KSC

3 **DECLARATION OF SERVICE**

4 I hereby declare as follows:

5 I am, and was at the time of service of the papers referred to herein, over the  
6 age of eighteen (18) years, not a party to the action, and employed in the County of  
7 San Diego, State of California. My business address is 402 W. Broadway, Suite  
8 1100, San Diego, California 92101.

9 I caused to be served the following document(s):

10 **ANSWER ON BEHALF OF DEFENDANT REPOSSESSION  
11 SPECIALIST, INC. dba ABA RECOVERY SERVICE, INC.  
12 (ERRONEOUSLY SUED AND SERVED AS ABA RECOVERY  
13 SERVICE, INC.)**

14 of which THE ORIGINAL DOCUMENT OR A TRUE AND CORRECT COPY is  
15 attached hereto, addressed to each such addressee respectively as follows:

16       Alexander B. Trueblood, Esq.  
17       Trueblood Law Firm  
18       10940 Wilshire Blvd., Ste. 1600  
19       Los Angeles, CA 90024  
20       (310) 443-4139 / Fax: (310) 943-2255  
21       alec@hush.com  
22       **COUNSEL FOR PLAINTIFF**  
23       **JOSEPHINE THORNTON**

24  **BY CM/ECF:** I electronically filed the foregoing document(s) with the Clerk  
25 of the Court using the CM/ECF system, which will send an email notification of  
26 such filing to the person(s) so designated above.

27  **BY E-MAIL:** I caused said document(s) to be delivered via electronic mail (e-  
28 mail) to the person(s) so designated above.

29  **BY U.S. MAIL:** I placed each sealed, prepaid envelope for collection and  
30 mailing at 402 W. Broadway, San Diego, California, 92101. I am readily familiar  
31 with the business practice for collection and processing of correspondence for  
32 mailing with the United States Postal Service pursuant to which practice the  
33 correspondence will be deposited with the United States Postal Service this same  
34 day in the ordinary course of business.

35  **BY FACSIMILE:** I caused said document(s) to be transmitted by facsimile  
36 transmission. The name(s) and facsimile machine telephone number(s) of the  
37 person(s) served are set forth above. The sending facsimile machine properly  
38 issued a transmission report confirming that the transmission was complete and  
39 without error.

40  **BY OVERNIGHT MAIL:** I caused said document(s) to be deposited in a box or  
41 other facility regularly maintained by an express service carrier providing overnight  
42 delivery in an envelope or package designated by the express service carrier with  
43 delivery fees paid or provided.

1            **BY PERSONAL SERVICE:** I caused such document(s) to be hand-delivered to  
2 the person(s) served hereunder. A separate Proof of Personal Service will be  
3 provided.

4           I declare under penalty of perjury under the laws of the State of California  
5 that the foregoing is true and correct. Executed October 16, 2015.

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